

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office at 703-746-5335 on the date below:

9-25-03

Date

Amy G. Klann

AMY G. KLANN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Mark J. Rupar
William P. Donovan
Yuping Tan
Annette C. Slaney

Group Art Unit: 1652

Examiner: R. Prouty

Serial No.: 10/386,972

Atty. Dkt. No.: MECO:017--2
11792.0017.DVUS02

Filed: March 12, 2003

For: BACILLUS THURINGIENSIS CRYET29
COMPOSITIONS TOXIC TO
COLEOPTERAN INSECTS AND
CTENOCEPHALIDES SPP.

DECLARATION REGARDING DNA SEQUENCING CORRECTIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, William P. Donovan, hereby declare that:

1. The cryET29 gene contained on recombinant plasmids pEG1298 and pEG1299 was recently re-sequenced at Monsanto, and has been found to contain two differences from the DNA sequence listed in the above-referenced application as SEQ ID NO:1 and in Fig. 1B. I became aware of these two differences in data recently furnished to me. The differences are found in SEQ ID NO:1 and correspondingly in Fig. 1B, where the nucleotide at position 385 should be listed as a guanine residue instead of a cytosine, and the nucleotide at position 386 should be listed as a cytosine residue instead of a guanine. These two nucleotide changes result in a corresponding

change in the amino acid sequence at position 129 from an arginine residue (Arg) to an alanine residue (Ala) in SEQ ID NO:1, SEQ ID NO:2, and in Fig. 1B.

2. The *Bacillus thuringiensis* strain from which CryET29 was originally isolated (EG4096) as well as *Escherichia coli* strain EG11513 containing plasmid pEG1298 with the gene coding for CryET29, were deposited with the Agricultural Research Culture Collection on May 30, 1996 and September 12, 1996, respectively. The date of the deposit was before the U.S. filing date of this application. Copies of the microorganism deposit receipts have been submitted with this application.

3. Since the gene encoding CryET29 was present in deposited samples EG4096 and EG11513, anyone of skill in the art could have sequenced this gene and identified the correct sequence containing the "GC" nucleotides at positions 385 and 386.

4. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

William P. Donovan
William P. Donovan, Ph.D., Inventor

Date: September 22, 2003

Monsanto Company
700 Chesterfield Parkway North
Chesterfield, Missouri 63198

BUDAPEST TREATY ON THE INTERNATIONAL
RECOGNITION OF THE DEPOSIT OF MICROORGANISMS
FOR THE PURPOSE OF PATENT PROCEDURES

INTERNATIONAL FORM

Dr. Mark Rupa
Ecogen, Inc.
2005 Cabot Blvd. West
Langhorne, PA 19047

NAME AND ADDRESS
OF DEPOSITOR

RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT
issued pursuant to Rule 7.1 by the
INTERNATIONAL DEPOSITARY AUTHORITY
identified at the bottom of this page

I. IDENTIFICATION OF THE MICROORGANISM

Identification reference given by the
DEPOSITOR:

Escherichia coli
EG11513

Accession number given by the
INTERNATIONAL DEPOSITARY AUTHORITY:

NRRL B-21624

II. SCIENTIFIC DESCRIPTION AND/OR PROPOSED TAXONOMIC DESIGNATION

The microorganism identified under I. above was accompanied by:

- ☐ a scientific description
☒ a proposed taxonomic designation

(Mark with a cross where applicable)

III. RECEIPT AND ACCEPTANCE

This International Depositary Authority accepts the microorganism identified under I.
above, which was received by it on September 12, 1996 (date of the original deposit)¹

IV. RECEIPT OF REQUEST FOR CONVERSION

The microorganism identified under I. above was received by this International
Depositary Authority on (date of the original deposit) and
a request to convert the original deposit to a deposit under the Budapest Treaty
was received by it on (date of receipt of request for conversion)

V. INTERNATIONAL DEPOSITARY AUTHORITY

Name: Agricultural Research Culture
Collection (NRRL)
International Depositary Authority
Address: 1815 N. University Street
Peoria, Illinois 61604 U.S.A.

Signature(s) of person(s) having the power
to represent the International Depositary
Authority or of authorized official(s):

Date: 9-15-96

Where Rule 6.4(d) applies, such date is the date on which the status of international
depositary authority was acquired.

CERTIFICATE OF MAILING	
37 C.F.R. 1.8	
I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on the date below:	
Feb 19, 2000 Date	<i>Paul S. Sandherr</i> Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Mark J. Rupar
William P. Donovan
Yuping Tan
Annette C. Slaney

Group Art Unit: 1652

Examiner: R. Prouty

Serial No.: 09/611,216

Atty. Dkt. No.: MECO:017--1
11792.0017.DVUS00

Filed: July 6, 2000

For: BACILLUS THURINGIENSIS CRYET29
COMPOSITIONS TOXIC TO
COLEOPTERAN INSECTS AND
CTENOCEPHALIDES SPP.

DECLARATION OF BIOLOGICAL CULTURE DEPOSIT

Commissioner for Patents
Washington, D.C. 20231

Sir:

I, William P. Donovan, hereby declare that:

1. The following materials referred to in the specification of the above-referenced application have been deposited with the Agricultural Research Culture Collection.

TAXONOMIC DESCRIPTION

EG11513

DEPOSIT NUMBER

NRRL B-21624

2. The date of the above deposit is on or before the U.S. filing date of this application.
3. The name and address of the depository is:

Agricultural Research Culture Collection (NRRL)
International Depositary Authority
1815 N. University Street
Peoria, Illinois 61604
4. With respect to the permanence of the culture deposit:
 - a. the depository is an official depository in accordance with the Budapest Treaty for the above deposited cultures;
 - b. the depository affords permanence of the deposit for at least 30 years or at least 5 years after the most recent storage request, whichever is longest; and
 - c. evidence that permanent availability of the microorganism is assured as provided in the form of the attached copy of the contract with the above-mentioned depository with respect to the deposited cultures.

I affirm that should the microorganisms mutate, become nonviable or be inadvertently destroyed, I will replace such microorganisms for at least 30 years from the date of the original deposit, or at least 5 years from the date of the most recent request for release of a sample or for the life of any patent issued on the above-mentioned application, plus six (6) years to cover the statute of limitations, whichever period is longer.

5. With respect to availability of the cultures I affirm that the deposit has been made under conditions of assurance that during the pendency of this application, access to the deposits will be afforded to the Commissioner upon request; and all restrictions upon the availability to the public of the deposited biological material will be irrevocably removed upon the granting of a patent on this application.

6. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

William P. Donovan

William P. Donovan, Ph.D., Inventor

Date: January 15, 2002

Monsanto Company
700 Chesterfield Parkway North
Chesterfield, Missouri 63198

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to : Commissioner for Patents, Washington, DC 20231, on the date below:

September 3, 2002
Date

Paula S. Lindhart
Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Mark J. Rupar
William P. Donovan
Yuping Tan
Annette C. Slaney

Group Art Unit: 1652

Examiner: R. Prouty

Atty. Dkt. No.: MECO:017--1

Serial No.: 09/611,216

Filed: July 6, 2000

For: BACILLUS THURINGIENSIS CRYET29
COMPOSITIONS TOXIC TO
COLEOPTERAN INSECTS AND
CTENOCEPHALIDES SPP.

CORRESPONDENCE ADDRESS
ELECTION UNDER 37 C.F.R. §§ 3.71 and 3.73
AND POWER OF ATTORNEY

Commissioner for Patents
Washington, D.C. 20231

Sir:

Please direct all communications as follows:

Patricia A. Kammerer
HOWREY SIMON ARNOLD & WHITE, LLP
750 Bering Drive
Houston, Texas 77057
(713) 787-1400

The undersigned, being Assignee of the entire interest in the above-identified application by virtue of an Assignment recorded in the United States Patent and Trademark Office as set forth below, hereby elects, under 37 C.F.R. § 3.71, to prosecute the application to the exclusion of the inventor(s).

The Assignee hereby revokes any previous Powers of Attorney and appoints:

T. K. Ball, Reg. No. 42,287; George R. Beck, Reg. No. 21,180; Gary M. Bond, Reg. No. 29,283; Grace L. Bonner, Reg. No. 32,963; Alissa M. Eagle, Reg. No. 37,126; Christopher E. Flick, Reg. No. 42,538; Dennis R. Hoerner, Jr., Reg. No. 30,914; Thomas E. Kelley, Reg. No. 29,938; Lawrence M. Lavin, Jr., Reg. No. 30,768; E. Clifford Lawson, Reg. No. 46,860; Thomas P. McBride, Reg. No. 32,706; Michael J. Roth, Reg.

HOWREY SIMON ARNOLD & WHITE, LLP

No. 29,342; Joseph A. Schaper, Reg. No. 30,493; Donna E. Scherer, Reg. No. 34,719; Brian K. Stierwalt, Reg. No. 33,213; and Martha J. Yates, Reg. No. 47,194, each an attorney or patent agent with MONSANTO COMPANY, so long as they remain with such company,

and

John F. Lynch, Reg. No. 22,504; J. Paul Williamson, Reg. No. 29,600; John D. Norris, Reg. No. 28,246; Patricia A. Kammerer, Reg. No. 29,775; Stephen H. Cagle, Reg. No. 26,445; Melinda L. Patterson, Reg. No. 33,062; Susan K. Knoll, Reg. No. 33,254; Steven G. Spears, Reg. No. 43,926; Janelle D. Waack, Reg. No. 36,300; Ira D. Finkelstein, Reg. No. 44,680; Carter J. White, Reg. No. 41,374; Darrell Dotson, Reg. No. 44,661; Connie Flores-Jones, Reg. No. 41,755; Matthew Madsen, Reg. No. 45,594; Robert Auerbach, Reg. No. 46,525; Raymond Reese, Reg. No. 47,891; Christopher Buntel, Reg. No. 44,573; Jason C. Abair, Reg. No. 44,007; Amy G. Klann, Reg. No. 48,155; and Ryan Heck, Reg. No. P51,795; each an attorney or patent agent with the law firm of HOWREY SIMON ARNOLD & WHITE, LLP, as its attorney so long as they remain with such law firm,

with full power of substitution and revocation, to prosecute the application, to make alterations and amendments therein, to transact all business in the Patent and Trademark Office in connection therewith, to receive any Letters Patent, and for one year after issuance of such Letters Patent to file any request for a certificate of correction that may be deemed appropriate.

Pursuant to 37 C.F.R. § 3.73, the undersigned has reviewed the evidentiary documents, specifically the Assignment to MONSANTO TECHNOLOGY LLC referenced below, and certifies that to the best of my knowledge and belief, title remains in the name of the Assignee.

Pursuant to MPEP § 324(2), the undersigned avers that she is empowered to sign this statement on behalf of assignee.

ASSIGNEE: MONSANTO TECHNOLOGY LLC

Date: August 1, 2002 By: Grace L. Bonner
Name: Grace L. Bonner
Registration No. 32,963
Title: Intellectual Property Counsel

ASSIGNMENT:

☐ Concurrently filed
☒ Previously Recorded:
Date: June 13, 2001
Reel: 012350
Frame: 0224/0235